

Message

From: Schefski, Kenneth [Schefski.Kenneth@epa.gov]
Sent: 11/30/2018 11:09:50 PM
To: Gleason, Michael [Gleason.Michael@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]
CC: Haniewicz, Melissa [Haniewicz.Melissa@epa.gov]
Subject: RE: Reminder about your federal post employment obligations

Mike,

Attorney Client / Ex. 5

Thanks, KC

K.C. Schefski
Regional Counsel
US EPA, Region 8
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From: Gleason, Michael
Sent: Monday, November 19, 2018 3:10 PM
To: Thomas, Deb <thomas.debrah@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>
Cc: Haniewicz, Melissa <Haniewicz.Melissa@epa.gov>
Subject: FW: Reminder about your federal post employment obligations

FYI:

Michael P. Gleason
Senior Assistant Regional Counsel
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1595 Wynkoop Street
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(303) 312-6898

From: Shaun McGrath <slmcgrath@comcast.net>
Sent: Monday, November 19, 2018 2:13 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Gleason, Michael <Gleason.Michael@epa.gov>
Subject: Re: Reminder about your federal post employment obligations

Thanks Justina. Wow, you have good intel!

The information you provided is very helpful, and I'm sure I'll be consulting with you as I'm in the job and issues come up.

I really appreciate you proactively refreshing me of my obligations.

Best regards,

Shaun
303.887.2316

Sent from my iPad

On Nov 19, 2018, at 1:40 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Dear Shaun,

I understand that you have accepted the position of Director of the Montana Department of Environmental Quality, effective December 1. Congratulations! Let me take this opportunity to remind you about your federal post-employment obligations.

POST-EMPLOYMENT ADVICE

As a former EPA senior official who had supervisory responsibilities, you are restricted by the post-employment statute, 18 U.S.C. § 207, as well as the Obama ethics pledge that you signed. Two restrictions continue to apply until January 20, 2019, so let's review all of them now.

- 18 U.S.C. § 207(a)(1) – under this permanent restriction, you cannot represent Montana or any other entity back to the United States (not just EPA) on the same specific party matters that you worked on personally and substantially by making an appearance or any other communication with the intent to influence a federal official on that same matter. This restriction is not waived because you work for a state; rather, it remains in force for your lifetime or the lifetime of the matter.

EXAMPLE: While the RA in EPA's Region 8, you worked personally and substantially on environmental issues related to the vermiculite mine in Libby, Montana. You will not be able to meet with or communicate to EPA, Interior or Justice with regard to this site on behalf of the State of Montana. Since you are not, as I recall, an attorney, you may work on this specific party matter "behind the scenes" so long as you do not make any appearance or communication back to the United States with the intent to influence any federal official on behalf of Montana with respect to this site or any other specific party matter you worked on personally and substantially. In other words, you can be the "brain" behind the contact, but not the face or the voice or the signature at the bottom of the correspondence.

- As a former supervisor, you will also be subject to 18 U.S.C. § 207(a)(2), which precludes you from representing Montana back to the United States in connection with any specific party matter that was pending in your area of responsibility – meaning Region 8 – during your last year of federal service (so 1/20/16 to 1/20/17). If any contract, license, grant,

enforcement action, permit, lawsuit, etc. that involved Montana was pending with EPA Region 8 during your last year, even if you didn't personally work on it personally and substantially, then you must abide by a two year cooling off period. During this period, you cannot represent Montana to the United States with regard to that specific party matter for two years, but that period ends after 1/20/19. After that, so long as you didn't yourself work personally and substantially on that matter, then you can represent Montana to the United States, including EPA.

- Finally, you were a former senior official, so you are subject to 18 U.S.C. § 207(c), which sets forth a one-year cooling off period with EPA. But the Obama ethics pledge that you signed extends that cooling off period from one year to two, so you would be prohibited from representing Montana back to EPA for another few weeks, if this provision applied to you. Luckily for you, though, as an employee of a state government, you will be able to enjoy the exception to the post-employment rules found at 5 C.F.R. § 2641.301(c), which allows a former senior employee (such as you) to carry out the duties of any agency or instrumentality of a State or local government without violating 18 U.S.C. § 207(c). And because you are exempt from the statute, you are also exempt from the additional year under the Obama pledge. So starting on December 1, 2018, you will be able to interact with EPA on any new matter, just not those specific party matters that were pending in Region 8 during your last year (that restriction will end after 1/20/19) or any specific party matter that you worked on personally and substantially (that restriction against representing Montana back to the United States will not end).

WE'RE STILL HERE

Should you have any post-employment questions, then you may reach me, Mike Gleason in Region 8 (gleason.michael@epa.gov), or anyone in OGC/Ethics at ethics@epa.gov. We really are still here to answer post-employment questions for you.

All the best,
Justina

Justina Fugh | Director, Ethics Law Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772